IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.700 OF 2006

Soma Bhikaji Kamble .. Petitioner

Versus

Shamrao Dattatray Mhalungekar

and Ors. .. Respondents

Mr.Amit Borkar for petitioner

Mr.P.D.Dalvi for respondent No.2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13th February 2006.

P.C.

. Heard Mr.Borkar for petitioner and Mr.Dalvi for respondent Nos. 2 and 3.

Petitioner original plaintiff is suing through power of attorney holder one Raju Bhupal Kadappa. Respondent Nos. 2 and 3 are the original defendants claiming through respondent No.1 original defendant No.1.

2. In the suit being R.C.S.No.239 of 2004 the petitioner plaintiff has averred that the abovementioned power of attorney holder is in possession of the property on and from 29th July 1998 and his possession was sought to be obstructed by respondents herein on 23rd June 2004.

3. On the other hand, respondents have contended that on the basis of an agreement for sale dated 28th June 1998, they have been put in possession of the property in question. They raised several objections to the maintainability of the suit and upholding them, the trial court has rejected petitioner’s application (Exh.5)

vide order dated 9th may 2005.

4. Petitioner unsuccessfully challenged this order. Lower appellate court has dismissed the appeal by the order under challenge.

5. These orders are subject matter of this petition under Article 227 of the Constitution.

6. After hearing Mr.Borkar and perusing with his assistance the plaint and the orders under challenge, as also noting the objections raised by Mr.Dalvi appearing for original defendants, in my view, interest of justice would be served if the original defendants are restrained by an order and injunction from in any manner alienating, encumbering, creating third party rights in or parting with possession of the suit land viz., Gat No.605, Hissa No.2, admeasuring 0.81 Are (suit property) till hearing and final disposal of the suit. This order would stand

substituted in place of the orders under challenge and would operate as an interlocutory order during pendency of the suit.

7. I have noted the rival contentions and at this stage on the basis of the prima facie materials, it is not possible to conclusively hold that petitioner plaintiff is entitled to a temporary injunction to protect his alleged possession. However, upon further materials produced, petitioner would be entitled to urge that the suit be decreed and neither orders passed by the trial court and lower appellate court as well as this order shall prevent petitioner from raising appropriate contentions and for the trial court to pass orders based thereon in accordance with the law. All contentions on merits of both sides are expressly kept open. Petition disposed of.

(S.C.DHARMADHIKARI, J)